IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.904 OF 2000

Sahebrao Pandurang Gaikwad)..Appellant
Convict Prisoner No.C/11713)
Yerwada Central Prison,)
Pune-411 006.)

Versus

The State of Maharashtra)..Respondent

Mrs.Smita Gawai for the appellant.

Mrs.V.R.Bhonsale, Addl. Public Prosecutor for the Respondent/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 11.03.2005.

Oral Judgment : (Per : R.S.Mohite,J)

1. This is an appeal filed by the appellant-Sahebrao Pandurang Gaikwad (hereinafter referred to as the accused) seeking to quash and set aside the Judgment and order dated 13.10.2000 passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No.1095/1998. By the impugned Judgment and order the Additional Sessions Judge has convicted the accused for an offence punishable under Section 302 of IPC and has sentenced him to under-go life imprisonment and to pay a fine of Rs.3000/-, in default to suffer further imprisonment of 6 months.

2. Brief facts of the prosecution case were as

under :-

(a) That the accused Sahebrao Pandurang Gaikwad was earlier married to a lady called Meghna. From Meghna he had 2 sons viz. Avinash & PW 6-Pravin. Meghna expired and after her death, Sahebrao married the deceased Sangeeta in the year 1997. He was residing alongwith Sangeeta and his 2 sons from Meghna in room no.9 of Abhyankar building situated at Slater road, Grant road, Mumbai. The accused Sahebrao was working as a Conductor with BEST and used to work in shifts.

(b) The incident in question took place on 1.8.1998 between 1.00 A.M. & 2.00 A.M. PW-4 Rony Thomas Alfanso was the immediate neighbour of the accused and the deceased while the accused hit and the deceased used to stay in room no.9 of the 1st floor of the building, Rony Alfanso was residing in room no.10. Between 1.00 & 2.00 P.M. PW-4 Rony Alfanso heard quarrels between the accused Sahebrao and the deceased Sangeeta. He was familiar with their voices and therefore, was in a position to know that the people who had quarrelling were Sahebrao and Sangeeta.

(c) At about 1.30 A.M. PW-2 Sulochana Mali who resides in room no.2 of the ground floor of the same building heard a knock on her door. When she opened the door she saw Sangeeta standing there without any

clothes on her person. Sangeeta told her that she was not having any clothes and requested her to give a saree. PW-2 Sulochana Mali then gave her a saree of rose colour. She also gave her a petticoat and a blouse. At that time, the accused Sahebrao came there. He was shouting. He questioned PW-2 Sulochana as to whether the deceased Sangeeta was related to her. PW-2 Sulochana replied that she was not related and thereafter Sangeeta and Sahebrao left her house.

(d) In the morning of 1.8.1998 PW 1 Kusum Gaikwad who is a wife of the younger brother of the accused and who resides near them came to the house of the accused. She found that the door of the house was closed. However, when she pushed hard against the door, it opened. On entering she saw the deceased Sangeeta lying on her back. Her children Avinash and Pravin were sitting by her side. She called out to deceased Sangeeta but did not receive any reply. In a frightened state of mind, she went to the house of PW-3 Suman Padekar and told her that Sangeeta was not responding to her calls. PW-1 Kusum Gaikwad and PW-3 Suman Padekar then again went to the house of the accused. They found that Sangeeta’s body was cold and that she had sustained injuries. She enquired with the small children Avinash and Pravin and were told by these children that their father Sahebrao had beaten their mother Sangeeta with a stick. PW-1 Kusum Gaikwad then made a telephone call to the Gamdevi police station at 9.15 A.M. and

informed the police that her sister-in-law Sangeeta was lying on the ground and was not giving any response. She also informed the police that Sangeeta had sustained injuries. She gave the detailed address of the house of the accused to the police.

(e) On receipt of such information PW-7 Mahadeo Birajdar PSI attached to Gamdevi police station immediately proceeded to the spot of the offence. On entering the house of the accused he noticed that one lady was lying on her back and there were 3 to 4 ladies and 2 small children in the room. Amongst the 2 children, PW 6 Pravin was also present. He then made a phone call to the police station which was taken by PW-9 Prakash Khanvilkar. PW-9 alongwith API Savant and other police staff then proceeded to the spot of the incident. On reaching there, he recorded the Complaint (Exh.8) of PW-1 Kusum Gaikwad. He registered C.R.No.249/98 and after calling 2 panchas, amongst whom one was PW-5 Nilam Pawar, he conducted spot/inquest panchanama (Exh.14). He recorded the statement of PW-6 Pravin Gaikwad who was then about 7 years of age. He also recorded statement of PW-3 Suman Padekar. He then sent the dead body of deceased Sangeeta alongwith ADR form No.97/98 for post mortem. After the post mortem was conducted he handed over the dead body to the father of the deceased. In due course he collected the post mortem notes. The post mortem notes indicated that there were as many as 22

injuries on the body of the deceased. The external injuries found by the Doctor were as follows :-

1. Multiple linear teeth mark injuries oncirculling into a horizontal oval shape over right cheek 5 cm. lateral and below to laternal canthus of right eye, 5 cm. anterior to angle of right mandible size horizontal diameter 4 cm. X vertical diatmeter 3.5 cm., superificial skin deep, redish in colour.

2. Multiple linear teeth mark injuries oncirculling into a horizontal oval shape over right cheek below external injury number 1.2 cms. right lateral to right angle of mouth size horizontal diameter 3.5 cm X vertical diameter 3.0 cm superficial skin deep redish in colour.

3. C.L.w. over left tomporal region 2 cm. lateral to lateral canthus of left eye size 2 cm. X 1.5 cm. bone deep, redish in colour.

4. Multiple linear teeth mark injuries oncirculling into a horizontal oval shape over left cheek 4 cm. below the lateral canthus of left eye 6 c. anterior to angle of left mandible size horizontal diameter 4.2 cm X vertical diameter 3.4 cm. superficial skin deep, redish in colour.

5. Multiple linear teeth mark injuries encirculling into a horizontal oval shape, over left cheek below external injury No.4, 3 cms. lateral to left angle of mouth, size horizontal diameter 3.2 cm. X vertical diameter 2.8 cm. superficial skin deep, redish in colour.

6. C.L.W. over midpoint of chin 6 cms. below lower lip size 1 cm. X 0.5 oblique, skin deep, redish in colour.

7. Multiple linear teeth mark injuries encirculling into a horizontal oval shape around the nipple of right breast size horizontal diameter 4 cm X vertical diameter 3 cm. skin deep, redish in colour, blood oozes from the injuries.

8. Multiple linear teeth mark injuries encirculling into a horizontal diameter 4 cm X vertical diameter 3.5 cm. skin deep, redish in colour blood oozes from the injuries.

9. Contusion over left lower chest region, 6 cm. below the left nipple of the breast 2 cm. left lateral to midline, size 9 cm X 2 cm. transverse redish in colour.

10. Contusion over abdomen 7.5 cm. below the xypoid process, transversely extending from right

midclaviculr line to left axillary line size 21 cm. X 8 cms. transverse redish in colour.

11. Contusion over lower abdomen medially 1 cm. below umbillicus and laterally 4 cm. below the umbillical line, lower margin of the contusion 6 cms. above the symphasis pubis transversely exting from midline of body towards left lateral aspect of body (at level of anterior superior iliac spine) size at midline of body 15 cm. X 7.5 cm. redish in colour.

12. Contusion over left side of back extending from 8.5 cm. below the left top of shoulder 8 cm. left lateral to midline size X 2 cm. X 1.5 cm. oblique redish in colour.

13. Contusion over right scapular region 2 cm. below right shoulder top 7 cm. right lateral to midline size 6 cm. X 2.5cm. oblique redish in colour.

14. Contusion over left side of back extending from 3.5 cm below the lower and of left scapulat 2.5 cm. left to midline, size 15.5 cm. X 7 cm. transverse redish in colour.

15. Contusion over left lower back region extending from 4 cm. above the left posterior iliac crest to upwards 1.5 cm. left to midline size 11.5 cm. X 8.5 cm. transverse redish in colour.

16. Contusion over left hip extending 3.5 cm. below the left illiac crest line, 3 cms. left lateral to midline, size 16 cm. X 11 cm. vertical redish in colour.

17. Contusion over left inguinal region 2 cm. below the left anterior superior iliac spine, 8 cms. left lateral to symhysis pubis size 5 cm. X 4 cm. X oblique redish in colour.

18. Contusion over anterior aspect of left thigh 12 cm above the upper border of left patela size 4 cm. X 2 cm oblique redish in colour.

19. Contusion over left patela size 6 cm. X 2.5 cm. vertically oblique, redish in colour.

20. C.L.w. over anterior aspect of left sheen, 7 cm. below the lower margine of left patella, size 2 cm. X 0.5 c.m. oblique, bone deep, redish in colour.

21. Contusion over right knee joint front, 1 cm. above the upper border of right patella, size 1 cm. X 0.5 cm. oblique redish in colour.

22. C.L.w. over anterior aspect of right knee joint 2.5 cm. below the lower border or right patella, size 1 cm. X 0.5 cm. bone deep, oblique,

redish in colour.

(e) On internal examination the Doctor had found that there was a contusion over the lateral aspect of left frontal bone measuring 3 cm. X 2 cm. oblique. He found that there was a fracture of the right side ribs nos.4,5,6,7, & 8 and left side ribs nos.5,6, & 7. He found blood with blood clots in the thoracic cavity. The right lung was perforated and haemorrhagic. The left lung was also perforated and haemorrhagic. There was blood in the abdomen cavity with blood clots. The liver and spleen were ruptured and haemorragic. The deceased was found pregnant and was carrying a male foetus of 10 cms. size. He opined that the cause of death was due to haemorrhage and shock due to polytrauma and was un-natural.

(f) In the course of investigation PSI (PW 9) Prakash Khanvilkar attached the clothes and ornaments of the deceased under panchanama (Exh.22), directed the arrest of the accused Sahebrao at 3.00 P.M. on that day and attached his clothes under panchanama (Exh.18). He sent the attached articles to the C.A. alongwith his covering letter (Exh.25). He received 2 separate C.A. reports (Exh.26). Thereafter on the completion of his investigation, on 12.10.1998 he filed a chargesheet in the Court of Metropolitan Magistrate. In due course the matter was committed to the Court of sessions for trial.

3. The prosecution examined 9 witnesses to prove its case and also produced on record several documents and articles in support of its case. The defence did not lead any evidence but from the suggestion put to witnesses and from the 313 statement of the accused, the defence of the accused appears to be "total denial". The accused gave no explanation what-so-ever as to how his wife died in his house in the early hours in the morning of 1.8.1998.

4. We heard the learned Advocate appearing for the accused and the learned Addl.Public Prosecutor for the State. We have perused the entire evidence and gone through the record. On behalf of the accused it was contended that the only witnesses to the incident were the 2 children Avinash and Pravin who were present in the room. That it was inconceivable that the children would not wake up after hearing the quarrel between their parents. That these 2 children had not disclosed anything to their aunt PW-1 Kusum Gaikwad who had come to their house in the morning or to any other neighbour. Though PW 4 Rony Alfanso spoke about hearing the quarrel between husband and wife between 1.00 A.M. & 2.00 A.M. on the date of incident, PW-5 Nilam Pawar who resided in room no.8 which was also adjoining to the house of the deceased did not speak about hearing any quarrel between husband and wife. It was contended that there was absolutely no motive brought on record for the commission of the alleged crime.

5. On behalf of the prosecution the learned Addl.Public Prosecutor supported the reasoning and finding given by the trial Court in the Judgment and order convicting the accused. She pointed out that there was no reason for the neighbouring persons to give false evidence against the accused. It was argued that (PW 6) Pravin was only 9 years of age on the date of the evidence and must have been about 6 to 7 years of age at the time of the incident. That even though Pravin did not directly speak about his father assaulting the deceased Sangeeta yet his evidence clearly established that the accused was present in his own house on the night when the incident occurred and was found missing by the children in the morning. It was contended that the evidence of PW 2 Sulochana Mali to the effect that deceased Sangeeta had come to her house without any clothes on her person and had asked for clothes which were given to her was corroborated by the fact that a separate set of clothes being a saree, a petticoat and a blouse were found from the left hand corner just outside the house. It was contended that PW-4 Rony Alfanso was an independent witness. Being a neighbour, he obviously could recognize the voices of the accused and the deceased and this witness clearly deposed about the hearing of a quarrel between 1.00 & 2.00 A.M. on the date of the incident. It was contended that merely because PW 5 Nilam Pawar who resided in another adjoining room did not hear the quarrel, it is not mean that the

evidence of PW 4 Rony Alfanso about hearing of such quarrel should be dis-believed. It was pointed out that human blood was found on the clothes of the accused and there was no explanation from him as to why such blood was found on his clothes. It was further pointed out that 3 pieces of a broken stick and a pipe were found on the spot of the incident and these articles were found stained with human blood. It was contended that these circumstances also supported the prosecution case about Sangeeta being beaten in her house.

6. We now proceed to deal with submissions made by both the parties.

7. In support of its case, the prosecution has examined the son of the deceased viz. Pravin Gaikwad. Pravin was 9 years old on the date of his deposition and would have been about 7 years old when the incident took place. No doubt, Pravin must have witnessed the entire incident and did not specifically implicate his father. However, from the evidence of Pravin it can be clearly gathered that his father the accused was present in the house in the night of 31.8.1998. It is also clear from his evidence that on the morning of 1.8.1998 the accused Sahebrao was found missing from his house. Apart from these factors, it is correct that the evidence of PW 6 Pravin does not directly implicate the accused. However, we find several other circumstances which in our view, are proved

circumstances being links which together form a complete chain which is sufficient to convict the accused even on the basis of circumstantial evidence.

8. PW 4 Rony Alfanso is a person residing in room no.10 which was immediately adjoining the room occupied by the deceased and the accused. This witness states that on 31.7.1998 he was not feeling well so he slept at about 10.00 P.M. During the night between 1.00 A.M. to 2.00 A.M., he heard quarrels between the accused Sahebrao and his wife Sangeeta. That he could recognize their voices. In his cross-examination he denied that no such quarrel was going on or that he was deposing falsely on the say of the police. This witness is an independent witness and we find nothing on the record as to why his version about hearing the quarrel between accused and the deceased should not be believed. This witness was an immediate neighbour and it was natural that he would know the voices of Sahebrao and Sangeeta. It is true that another witness PW 5 Nilam Pawar who resides in another adjoining room being room no.8 stated that she did not hear any quarrel. However, we cannot lose sight of the fact that the incident took place in the dead of the night and while the persons in the building were sleeping. It is quite possible that while some persons may have woken up hearing the quarrel, others may not have. The first circumstance against the accused is therefore, that he was present in his

own house on the night of the incident and was heard to be quarreling with his wife between 1.00 A.M. & 2.00 A.M. on the said night.

9. PW 2 Sulochana Mali was residing on the ground floor of the building. She states that her husband had gone out on duty and she was sleeping alongwith her sons. At about 1.30 A.M. she heard a knocking on her door. When she opened the door, she found the deceased Sangeeta. Sengeeta had no clothes on her person. Sangeeta told her that she was not having any clothes and asked her for a saree. PW 2 Sulochana Mali gave her a rose colour saree (Article-H). She also gave her a petticoat and a blouse. At that time, Sahebrao came there. He was shouting. He questioned PW 2 Sulochana as to whether she was related to Sangeeta. PW 2 Sulochana replied that she was not related and thereafter Sangeeta and Sahebrao left the spot. As regards this witness, the first thing to note is that she has absolutely no reason to falsely implicate the accused. One omission in her statement to the effect that the accused Sahebrao had asked her whether she was related to Sangeeta was brought on record. In our view, this omission is not material since there is no omission about the accused actually coming to her house and Sangeeta and Sahebrao thereafter leaving her house. Her version is also corroborated by the fact that apart from the saree (Article-H), petticoat of chocolate colour and blouse of blue colour found on the body of the

deceased, another saree, petticoat and blouse also having human blood stained were found on the left side corner after emerging from the room. This corroborates the evidence of PW 2 Sulochana Mali to the effect that the deceased Sangeeta had come to her house without any clothes. It was contended on behalf of the defence that since the set of clothes that had been removed also had human blood, the deceased must have had bleeding injuries before the said clothes were removed. It was contended that in such circumstances, PW 2 Sulochana Mali would have seen the injuries on the body of Sangeeta. We do not find it possible to accept this submission. The deceased had approached Sulochana in the dead of the night. The injuries on her person are in the nature of teeth bites and contusions. It is not possible to say how many of the 22 injuries were caused before Sangeeta visited the house of Sulochana and how many had caused subsequently. The first concern of Sangeeta seems to have been to get some clothes and in the circumstances, PW 2 Sulochana Mali could not have been expected to take a minute inspection of the body of the deceased Sangeeta in order to find out if there were any injuries on her body. It must also be borne in mind that it is not the prosecution case that Sangeeta informed PW 2 Sulochana Mali that she had been beaten by her husband. The deceased Sangeeta must have known that the accused was nearby and was probably expected any moment. In fact, evidence of PW 2 Sulochana Mali indicates that accused immediately arrived at the

spot and Sangeeta have to leave with him. This entire episode which has taken place in the house of PW 2 Sulochana Mali at about 1.30 A.M. seems to be a brief one and we are not inclined to dis-believe the evidence of PW 2 Sulochana Mali merely on the ground that she did not notice any injuries on the body of the deceased when the deceased had come to her house. The 2nd circumstance against the accused is therefore, that he was in his own house at the night of the incident and had come after the deceased Sangeeta when she had been to the house of PW 2 Sulochana Mali to ask for some clothes and had left the house of PW 2 Sulochana Mali alongwith deceased Sangeeta.

10. The accused was arrested by the police at about 3.00 P.M. on the same night. His clothes were seized and they were sent to Chemical Analyser. Chemical Analyser has found that there was human blood on the clothes of the deceased. There is no explanation coming forward from the accused regarding the finding of human blood on his clothes and this is the 3rd circumstance against the accused.

11. The finding of 3 pieces of a broken stick and a pipe from the scene of the offence indicated that the assault took place at the house of the accused. He has given no explanation regarding the breaking of the stick or the manner in which the injuries were sufferred by his wife, about the finding of a

spare set of her clothes and the very lack of such explanation even though he was present at the spot of the offence is an additional link in the chain of the circumstances.

12. The fact that the accused had left the house without giving any explanation to his children by the morning of 1.8.1998 is another circumstance which militates against the accused. The accused has not given any explanation about having left his house in which there was a body of his wife and his two small children, one being 7 years and the other even younger.

13. After taking on over all view, we find that the Judgment and order passed by the trial Court is based on sound and proper reasoning. The evidence on record, even on independent appraisal is sufficient to sustain the conviction of the accused. The appeal must therefore fail and therefore, stands dismissed.

14. Appeal stands dismissed.

(R.M.LODHA,J)

(R.S.MOHITE,J)